

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CORY GOTCH,)	CASE NO. 8: 15-CV- 350
)	
Plaintiff,)	
)	NOTICE OF REMOVAL
vs.)	OF A CIVIL ACTION
)	
MILK SPECIALTIES COMPANY,)	
)	
Defendant.)	
_____)	

COMES NOW Milk Specialties Company, a Delaware corporation, with its principle place of business in Minnesota, hereinafter referred to as Defendant, and pursuant to the provisions of 28 U.S.C. §§ 1332, 1441, and 1446, hereby gives Notice of Removal to the United States District Court for the District of Nebraska of that certain action in the District Court of Douglas County, Nebraska, at Case No. CI 15 – 317, styled *Cory Gotch v. Milk Specialties Company*, hereinafter referred to as the State Court Action, and represents pursuant to the provisions of 28 U.S.C. 1446(a) that such removal is based upon the following grounds:

1. On or about August 18, 2015, the Plaintiff, Cory Gotch, hereinafter referred to as Plaintiff, filed his Complaint, upon which Summons was issued in the State Court Action. Defendant first received a copy of the Summons and Complaint by personal service on its registered agent on August 26, 2015. Copies of the Summons, Complaint, and Return of Service are marked Exhibits A, B, and C respectively, attached hereto, and by this reference made a part hereof. Exhibits A and B are true and correct copies of all process, pleadings, and orders served upon Defendant in the State Court Action.

2. This Notice of Removal is timely filed within thirty (30) days after receipt by or service on Defendant of either the initial pleading or summons, specifically herein Exhibits A and B, in accordance with the provisions of 28 U.S.C. 1446(b).

3. Plaintiff is a citizen and resident of the State of Nebraska (Ex. A, Compl, ¶ 1).

4. Defendant is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal place of business in the State of Minnesota (Ex. A, Compl. ¶ 2).

5. This Court has original jurisdiction over this action on the following grounds:

a. Plaintiff has alleged that on or about January 22, 2013, in an accident at Defendant's facility in Norfolk, Madison County, Nebraska, steam was released and severely burned Plaintiff (Ex. A, Compl. ¶¶ 8, 10), and that as a result of alleged negligence of Defendant (Ex. A, Compl. ¶ 13), "Plaintiff has sustained and will continue to sustained [sic] damages, including but not limited to medical expenses, loss of earning, physical and mental pain and suffering, and loss of full mind and body" (Ex. A, Compl. ¶ 15).

b. Removal of the State Court Action is proper under the provisions of 28 U.S.C. § 1446(c)(2)(A) and (B), because the Plaintiff's Complaint seeks a money judgment, but State practice in Nebraska does not permit demand for a specific sum of general damages, and permits recover of damages in excess of any amount actually demanded. Accordingly, the amount in controversy in Plaintiff's Complaint exceeds the amount specified in 28 U.S.C. § 1332(a).

c. Plaintiff is a citizen of the State of Nebraska while Defendant is a citizen of the States of Delaware and Minnesota. Consequently, there exists diversity of citizenship between the parties pursuant to the provisions of 28 U.S.C. § 1332(a)(1) and (c)(1).

6. The State Court Action may be removed to this Court, as the “district and division embracing the place where such action is pending,” pursuant to the provisions of 28 U.S.C. §§ 1332, 1441, and 1446.

7. A copy of this Notice of Removal is being served upon Plaintiff, through his attorneys of record, and upon the Clerk of the District Court of Madison County, Nebraska, as required by the provisions of 28 U.S.C. § 1446(d). A true and correct copy of the related and corresponding Notice of Filing of Notice of Removal of Civil Action, which is to be filed in the State Court Action, is marked Exhibit D, attached hereto (without exhibits) and by this reference made a part hereof.

8. Defendant requests trial of the above-entitled action in Omaha, Nebraska.

9. Defendant expressly reserves all defenses to Plaintiff’s claims, including but not limited to all defenses based in contract, law, equity, statute, constitution, jurisdiction, or immunity, any other defense or avoidance, and does not waive any defenses by virtue of this removal.

WHEREFORE, Defendant requests that the referenced State Court Action be removed to this court pursuant to the provisions of 28 U.S.C. §§ 1332, 1441, and 1446, and prays for such other and further relief as the Court may deem appropriate in the premises.

MILK SPECIALTIES COMPANY, Defendant,

By: /s/ Mark J. Daly
Mark J. Daly (# 15373)
MaryBeth Frankman (#16557)
FITZGERALD, SCHORR, BARMETTLER
& BRENNAN, P.C., L.L.O.
200 Regency One
10050 Regency Circle
Omaha, Nebraska 68114-3794
(402) 342-1000
(402) 342-1025 fax
mdaly@fitzlaw.com
mbfrankman@fitzlaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 23, 2015, the foregoing Notice of Removal of a Civil Action was electronically filed with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

Edward J. Keane (#16093)
Keane Law Firm
600 4th Street, Suite 702
Sioux City, IA 51101
(712) 234-3088
(712) 234-3077 fax
ed.keane@siouxcityattys.com
Attorney for Plaintiff

And that said document was served, by regular U.S. mail, postage prepaid, and by electronic mail, to the following:

Jeremy J Cross (#23343)
Cross Law Firm, P.L.L.C.
600 4th Street, Suite 315
Sioux City, IA 51101
(712) 234-3055
(712) 277-7386 fax
jeremycross@crosslawplc.com
Attorney for Plaintiff

/s/ Mark J. Daly
Mark J. Daly

514225

Image ID:
D00047686D07

SUMMONS

Doc. No. 47686

IN THE DISTRICT COURT OF Madison COUNTY, NEBRASKA
 PO Box 249
 Madison NE 68748

Cory Gotch v. Milk Specialties Company

Case ID: CI 15 317

TO: Milk Specialties Company

You have been sued by the following plaintiff(s):

Cory Gotch

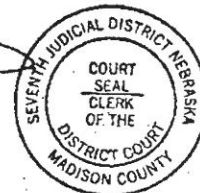
Plaintiff's Attorney: Jeremy J Cross
 Address: Attorney at Law
 600 4th St, Suite 315
 Sioux City, IA 51101
 Telephone: (712) 234-3055

A copy of the complaint/petition is attached. To defend this lawsuit, an appropriate response must be served on the parties and filed with the office of the clerk of the court within 30 days of service of the complaint/petition. If you fail to respond, the court may enter judgment for the relief demanded in the complaint/petition.

Date: AUGUST 18, 2015

BY THE COURT:

Monica J. Rothman
 Clerk



PLAINTIFF'S DIRECTIONS FOR SERVICE OF SUMMONS AND A COPY OF THE COMPLAINT/PETITION ON:

Milk Specialties Company
 7500 Flying Cloud Dr.
 Eden Prairie, MN 55344

BY: Lancaster County Sheriff
 Method of service: Personal Service
 Registered Agent: C T Corporation System, 5601 S. 59th St., Lincoln, NE 68516

You are directed to make such service within twenty days after date of this order and show proof of service as provided by law.

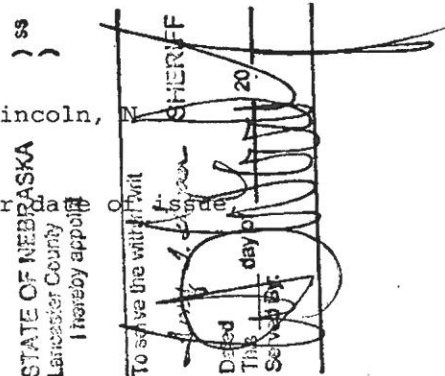


EXHIBIT A

Filed in Madison District Court
*** EFILED ***
Case Number: D07CI150000317
Transaction ID: 0002701054
Filing Date: 08/18/2015 03:21:12 PM CDT

IN THE NEBRASKA DISTRICT COURT FOR MADISON COUNTY

CORY GOTCH, Plaintiff, vs. MILK SPECIALTIES COMPANY, Defendant.	LAW NO.: <u>CI 15 317</u> COMPLAINT AND JURY DEMAND
---	---

COMES NOW the Plaintiff, Cory Gotch, by and through his attorneys of record, and states as follows:

PARTIES

1. Plaintiff is a resident of Newcastle, Nebraska.
2. Defendant is a Delaware corporation with its principle place of business at 7500 Flying Cloud Drive, Suite 500 Eden Prairie, Minnesota 55344. The corporation's registered agent is C T Corporation System at 5601 South 59th Street, Lincoln, Nebraska 68516.
3. The company is authorized to do business in the State of Nebraska and has a milk manufacturing plant at 805 West Omaha Avenue, Norfolk, Madison County, Nebraska.

JURISDICTION

4. Venue in this county is proper, as all acts or omissions occurred in this county and defendant resides here.
5. Subject matter jurisdiction is proper.

6. The court has personal jurisdiction over the parties.

FACTS

7. On January 22, 2013, Plaintiff was an employee of 3T Services, Inc., also known as 3TSI.

8. On January 22, 2013, Plaintiff was working at Milk Specialties Company in Norfolk, Madison County, Nebraska.

9. On said date, 3TSI had a contract with Milk Specialties Company to install a fire suppression system.

10. On said date, an employee for Milk Specialties Company opened a steam valve, which then released steam and severely burned Plaintiff.

COUNT I: NEGLIGENCE

11. Plaintiff re-pleads paragraphs 1-10, as if set forth fully herein.

12. At all times material hereto, Milk Specialties Company, by and through its employees, had a duty to maintain the premises in a safe condition and to provide a safe worksite.

13. Milk Specialties Company was negligent in the following particulars:

- a. In failing to provide a safe work environment;
- b. In failing to provide and employ proper and adequate lockout/tagout (LOTO) procedures and protocols;
- c. In failing to properly supervise its employees;
- d. In releasing steam while knowing Plaintiff was working on its equipment;
- e. In failing to ensure that Plaintiff was outside any potential hazard areas before releasing steam;

- f. In releasing steam without warning or before the necessary safety precautions had been exercised by its employees;
- g. In failing to follow the applicable safety codes and customs for such circumstances; or
- h. In designing and/or using a system that releases steam straight out to the area in which others are working.

14. The negligence of Milk Specialties company, by and through its employees working within the scope of their employment, caused Plaintiff's injuries and damages.

15. As a result of Milk Specialties' negligence, Plaintiff has sustained and will continue to sustained damages, including but not limited to medical expenses, loss of earning, physical and mental pain and suffering, and loss of full mind and body.

WHEREFORE, the Plaintiff, Cory Gotch, respectfully requests judgment be entered in favor of Plaintiff and against the Defendant for an amount that fully and fairly compensates Plaintiff for his injuries and damages, together with court costs and any further relief that this Court deems just and proper.

JURY DEMAND

COMES NOW the Plaintiff, Cory Gotch, and hereby demands a trial by jury.

Date: August 18, 2015

Respectfully submitted by:

CORY GOTCH, Plaintiff,

BY: 

JEREMY J. CROSS NE23343
CROSS LAW FIRM, P.L.L.C.,
600 4TH STREET, SUITE 315
SIOUX CITY, IA 51101
PHONE: 712/234-3055
FAX: 712/277-7386

ATTORNEY FOR PLAINTIFF,
CORY GOTCH

BY: 

EDWARD J. KEANE NE16093
KEANE LAW FIRM
600 4TH STREET, SUITE 702
PO Box 1379
SIOUX CITY, IA 51102-1379
PHONE: 712/234-3088
FAX: 712/234-3077

ATTORNEY FOR PLAINTIFF,
CORY GOTCH

*** EFILED ***

Case Number: D07CI150000317

Transaction ID: 0002743328

Filing Time: 2015-08-27 10:00:00 PM CDT

LANCASTER COUNTY SHERIFF'S OFFICE

Lincoln, Nebraska 68508

Process Service Return

Of Sheriff's Paper # 514225 to MADISON County DISTRICT Court

Case No: CI15 317

Received	Returned	Service and Return	\$ 18.00
08/20/2015	08/27/2015	Copy	
		Mileage	.61
Type of Process		Miscellaneous	
SUMMONS		Total Fees	\$ 18.61
Copy of COMPLAINT			

Paid by CROSS LAW FIRM

Witness Fee Paid \$

Clerk Fee Paid \$

=====

Plaintiff

GOTCH, CORY

Defendant

MILK SPECIALTIES COM

=====

I, Deputy WILLIAM WOODRUFF hereby certify that on 08/26/2015
 at 1443 hours, I served the within writ on the within named
 MILK SPECIALTIES COMPANY by delivering to KENDRA K INGERSOLL/REC RESEAR
 Assistant Secretary for the C.T. Corporation System,
 Registered Agent for the within named defendant, in person at his/her usual
 place of business, a true and certified copy of this writ with all
 endorsements thereon.

All done in Lancaster County, Nebraska, as required by law.

TERRY T. WAGNER, Sheriff

By /s/WILLIAM WOODRUFF

EXHIBIT C

IN THE DISTRICT COURT OF MADISON COUNTY, NEBRASKA

CORY GOTCH,)	CASE NO. CI 15 317
)	
Plaintiff,)	
)	
vs.)	NOTICE OF FILING OF
)	NOTICE OF REMOVAL
)	OF A CIVIL ACTION
MILK SPECIALTIES COMPANY,)	
)	
Defendant.)	
_____)	

TO: CORY GOTCH, PLAINTIFF, AND
THE CLERK OF THE DISTRICT COURT
OF MADISON COUNTY, NEBRASKA

PLEASE TAKE NOTICE that on this day a Notice of Removal of the above-captioned action was filed in the United States District Court for the District of Nebraska on behalf of the Defendant, Milk Specialties Company, pursuant to the provisions of 28 U.S.C. §§ 1332, 1441, and 1446, for the reason that the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and is between citizens of different states. The filing of such Notice in the United States District Court and this State Court effects the removal of this action from State Court. No further proceedings in this action before the State Court are allowed unless and until the action is remanded by the United States District Court. *See* 28 U.S.C. § 1446(d). A copy of the Notice filed in the United States District Court, together with all exhibits thereto, is attached hereto as Exhibit 1.

DATED September 23, 2015.

MILK SPECIALTIES COMPANY, Defendant,

By: /s/ Mark J. Daly

Mark J. Daly (# 15373)

MaryBeth Frankman (#16557)

FITZGERALD, SCHORR, BARMETTLER

& BRENNAN, P.C., L.L.O.

200 Regency One

10050 Regency Circle

Omaha, Nebraska 68114-3794

(402) 342-1000

(402) 342-1025 fax

mdaly@fitzlaw.com

mbfrankman@fitzlaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 23, 2015, the foregoing Notice of Filing of Notice of Removal of a Civil Action was electronically filed with the Clerk of the Court using the Justice E-filing system, which sent notification of such filing to the following:

Jeremy J Cross (#23343)

Cross Law Firm, P.L.L.C.

600 4th Street, Suite 315

Sioux City, IA 51101

(712) 234-3055

(712) 277-7386 fax

jeremycross@crosslawplc.com

Attorney for Plaintiff

Edward J. Keane (#16093)

Keane Law Firm

600 4th Street, Suite 702

Sioux City, IA 51101

(712) 234-3088

(712) 234-3077 fax

ed.keane@siouxcityattys.com

Attorney for Plaintiff

And that said document was served, by regular U.S. mail, postage prepaid, and by electronic mail, to the foregoing recipients on the same date.

/s/ Mark J. Daly

Mark J. Daly